

1 Robert G. Hubbard, JR.  
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2 Happy Valley, OR 97086  
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3 [Grubster411@hotmail.com](mailto:Grubster411@hotmail.com)

4 UNITED STATES DISTRICT COURT  
5  
6  
7  
8 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

9  
10 POM WONDERFUL LLC, A  
11 DELAWARE LIMITED LIABILITY  
COMPANY,

12 Plaintiff,  
13 vs.  
14 ROBERT G. HUBBARD D/B/A PUR  
15 BEVERAGES, PORTLAND  
16 BOTTLING COMPANY, AN  
OREGON COMPANY, AND DOES  
1 THROUGH 10, INCLUSIVE,

17 Defendant

Case No.: CV-13-06917-PLA

DEFENDANT'S FIRST AMENDED  
ANSWER TO PLAINTIFFS FIRST  
AMENDED COMPLAINT FOR :  
FEDERAL TRADEMARK  
INFRINGEMENT; VIOLATION OF  
THE LANHAM ACT 43(A);  
UNFAIR COMPETITION UNDER  
CALIFORNIA BUSINESS AND  
PROFESSIONS CODE 17200 ET  
SEQ.; CALIFORNIA COMMON  
LAW UNFAIR COMPETITION

DEMAND FOR TRIAL BY JURY

19  
20 Comes now, Robert G. Hubbard, DBA PUR Beverages and Northwest  
21 Beverage Distributors, ("Mr. Hubbard"), defendant in the above entitled action,  
22 and hereby answer the Plaintiff POM Wonderful LLC ("Plaintiff") amended  
23 complaint as follows:

25 Answering paragraph 1, Mr. Hubbard lacks information sufficient to  
26 form a belief as to the allegations contained therein, and on that basis denies each  
27 and every allegation.

29 Answering paragraph 2, Mr. Hubbard denies the allegations of the  
30 current location of Mr. Hubbard and his businesses, but admits that Mr. Hubbard is

32 DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE LANHAM ACT 43(A); UNFAIR  
COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;  
CALIFORNIA COMMON LAW UNFAIR COMPETITION - 1

1 involved in the manufacture and sale of Pur Pom. Mr. Hubbard denies any  
2 remaining allegations.  
3

4 Answering paragraph 3, Mr. Hubbard admits that Portland Bottling is  
5 located at 1321 NE Couch St. Portland, OR 97232. Mr. Hubbard admits that  
6 Portland Bottling is a co-packer of beverages, and that Mr. Hubbard has paid  
7 Portland Bottling to co-pack the drink Pur Pom. Mr. Hubbard denies any  
8 remaining allegations.  
9  
10

11 Answering paragraph 4, Mr. Hubbard lacks information sufficient to  
12 form a belief as to the knowledge of the Plaintiff, or its intent to amend the  
13 Complaint, and on that basis denies the allegations.  
14  
15

16 Answering paragraph 5, Mr. Hubbard denies each and every  
17 allegation contained therein.  
18

19 Answering paragraph 6, Mr. Hubbard denies that he conducts  
20 business and/or distributes products in California. Mr. Hubbard denies each and  
21 every allegation contained therein.  
22

23 Answering paragraph 7, Mr. Hubbard denies that this Court has  
24 subject matter jurisdiction.  
25

26 Answering paragraph 8, Mr. Hubbard denies that the venue is proper  
27 in this District, and deny the remaining factual allegations contained therein.  
28

29 Answering paragraphs 9, Mr. Hubbard lacks information sufficient to  
30 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each  
31 and every allegation.  
32

DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE LANHAM ACT 43(A); UNFAIR  
COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;  
CALIFORNIA COMMON LAW UNFAIR COMPETITION - 2

1                   Answering paragraphs 10, Mr. Hubbard lacks information sufficient  
2 to form a belief in regards to the Plaintiff's allegations, and on that basis, denies  
3 each and every allegation.  
4

5                   Answering paragraphs 11, Mr. Hubbard lacks information sufficient  
6 to form a belief in regards to the Plaintiff's allegations, and on that basis, denies  
7 each and every allegation.  
8

9                   Answering paragraph 12, Mr. Hubbard lacks information sufficient to  
10 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each  
11 and every allegation.  
12

13                   Answering paragraph 13, Mr. Hubbard denies each and every  
14 allegation therein.  
15

16                   Answering paragraph 14, Mr. Hubbard lacks information sufficient to  
17 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each  
18 and every allegation.  
19

20                   Answering paragraph 15, Mr. Hubbard lacks information sufficient to  
21 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each  
22 and every allegation.  
23

24                   Answering paragraph 16, Mr. Hubbard lacks information sufficient to  
25 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each  
26 and every allegation.  
27

28                   Answering paragraph 17, Mr. Hubbard denies each and every  
29 allegation contained therein.  
30

31  
32 DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE LANHAM ACT 43(A); UNFAIR  
COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;  
CALIFORNIA COMMON LAW UNFAIR COMPETITION - 3

Answering paragraph 18, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 19, Mr. Hubbard lacks information sufficient to form a belief in regards to the Plaintiff's allegations, and on that basis, denies each and every allegation.

Answering paragraph 20, Mr. Hubbard lacks information sufficient to form a belief in regards to the Plaintiff's allegations, and on that basis, denies each and every allegation.

Answering paragraph 21, Mr. Hubbard lacks information sufficient to form a belief in regards to the Plaintiff's allegations, and on that basis, denies each and every allegation.

Answering paragraph 22, Mr. Hubbard lacks information sufficient to form a belief in regards to the Plaintiff's allegations, and on that basis, denies each and every allegation.

Answering paragraph 23, Mr. Hubbard lacks information sufficient to form a belief in regards to the Plaintiff's allegations, and on that basis, denies each and every allegation.

Answering paragraph 24, Mr. Hubbard lacks information sufficient to form a belief in regards to the Plaintiff's allegations, and on that basis, denies each and every allegation.

DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE LANHAM ACT 43(A); UNFAIR  
COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;  
CALIFORNIA COMMON LAW UNFAIR COMPETITION - 4

1                   Answering paragraph 25, Mr. Hubbard lacks information sufficient to  
2 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each  
3 and every allegation.

5                   Answering paragraph 26, Mr. Hubbard lacks information sufficient to  
6 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each  
7 and every allegation.

9                   Answering paragraph 27, Mr. Hubbard lacks information sufficient to  
10 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each  
11 and every allegation.

13                  Answering paragraph 28, Mr. Hubbard lacks information sufficient to  
14 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each  
15 and every allegation.

17                  Answering paragraphs 29, Mr. Hubbard denies each and every  
18 allegation contained therein.

21                  Answering paragraph 30, Mr. Hubbard denies each and every  
22 allegation contained therein.

23                  Answering paragraph 31, Mr. Hubbard denies each and every  
24 allegation contained therein.

26                  Answering paragraph 32, Mr. Hubbard admits manufacturing and  
27 selling a beverage named Pur Pom and that Exhibit D is a photocopy of an image  
28 of the Pur Pom beverage, but deny that the drink is considered an energy drink, and  
29 denies all remaining allegations.

32 DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE LANHAM ACT 43(A); UNFAIR  
COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;  
CALIFORNIA COMMON LAW UNFAIR COMPETITION - 5

Answering paragraphs 33, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 34, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 35, Mr. Hubbard lacks information sufficient to form a belief in regards to the Plaintiff's allegations, and on that basis, denies each and every allegation.

Answering paragraph 36, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 37, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 38, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 39, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 40, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 41, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 42, Mr. Hubbard denies each and every allegation contained therein.

DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE LANHAM ACT 43(A); UNFAIR  
COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;  
CALIFORNIA COMMON LAW UNFAIR COMPETITION - 6

Answering paragraph 43, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 44, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 45, Mr. Hubbard repeats its responses to paragraphs 1-44 as though set forth here in full.

Answering paragraph 46, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 47, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 48, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 49, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 50, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 51, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 52, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 53, Mr. Hubbard denies each and every allegation contained therein.

DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE LANHAM ACT 43(A); UNFAIR  
COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;  
CALIFORNIA COMMON LAW UNFAIR COMPETITION - 7

1                   Answering paragraph 54, Mr. Hubbard repeats its responses to  
2 paragraphs 1 through 53 as though set forth here in full.  
3

4                   Answering paragraph 55, Mr. Hubbard denies each and every  
5 allegation contained therein.  
6

7                   Answering paragraph 56, Mr. Hubbard denies each and every  
8 allegation contained therein.  
9

10                  Answering paragraph 57, Mr. Hubbard denies each and every  
11 allegation contained therein.  
12

13                  Answering paragraph 58, Mr. Hubbard denies each and every  
14 allegation contained therein.  
15

16                  Answering paragraph 59, Mr. Hubbard denies each and every  
17 allegation contained therein.  
18

19                  Answering paragraph 60, Mr. Hubbard denies each and every  
20 allegation contained therein.  
21

22                  Answering paragraph 61, Mr. Hubbard denies each and every  
23 allegation contained therein.  
24

25                  Answering paragraph 62, Mr. Hubbard denies each and every  
26 allegation contained therein.  
27

28                  Answering paragraph 63, Mr. Hubbard repeats its responses to  
29 paragraphs 1 through 62 as though set forth here in full.  
30

31                  Answering paragraph 64, Mr. Hubbard denies each and every  
32 allegation contained therein.  
33

DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE LANHAM ACT 43(A); UNFAIR  
COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;  
CALIFORNIA COMMON LAW UNFAIR COMPETITION - 8

1                   Answering paragraph 65, Mr. Hubbard denies each and every  
2 allegation contained therein.  
3

4                   Answering paragraph 66, Mr. Hubbard denies each and every  
5 allegation contained therein.  
6

7                   Answering paragraph 67, Mr. Hubbard denies each and every  
8 allegation contained therein.  
9

10                  Answering paragraph 68, Mr. Hubbard denies each and every  
11 allegation contained therein.  
12

13                  Answering paragraph 69, Mr. Hubbard denies each and every  
14 allegation contained therein.  
15

16                  Answering paragraph 70, Mr. Hubbard denies each and every  
17 allegation contained therein.  
18

19                  Answering paragraph 71, Mr. Hubbard repeats his responses to  
20 paragraphs 1 through 70 as though set forth here in full.  
21

22                  Answering paragraph 72, Mr. Hubbard denies each and every  
23 allegation contained therein.  
24

25                  Answering paragraph 73, Mr. Hubbard denies each and every  
26 allegation contained therein.  
27

28                  Answering paragraph 74, Mr. Hubbard denies each and every  
29 allegation contained therein.  
30

31                  Answering paragraph 75, Mr. Hubbard denies each and every  
32 allegation contained therein.  
33

DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE LANHAM ACT 43(A); UNFAIR  
COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;  
CALIFORNIA COMMON LAW UNFAIR COMPETITION - 9

Answering paragraph 76, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 77, Mr. Hubbard denies each and every allegation contained therein.

Answering paragraph 78, Mr. Hubbard denies each and every allegation contained therein.

## AFFIRMATIVE DEFENSES

Mr. Hubbard sets forth below his affirmative defenses. By setting forth these affirmative defenses, Mr. Hubbard does not assume the burden of proving any fact, issue, or elements of a cause of action where such burden properly belongs to Plaintiff. Moreover, nothing stated herein is intended or shall be construed as an acknowledgement that any particular issue or subject matter necessarily is relevant to Plaintiff's allegations.

## **FIRST AFFIMATIVE DEFENSE**

**(Failure To State A Cause Of Action)**

Each cause of action in the Complaint fails to state a claim upon which relief can be granted.

## **SECOND AFFIRMATIVE DEFENSE**

### (Equitable Defenses)

Plaintiff's claims against Mr. Hubbard are barred, in whole or in part, by the doctrines of laches, unclean hands, estoppel, and waiver.

## **THIRD AFFIRMATIVE DEFENSE**

### (First Amendment Rights)

The Complaint, and each cause of action therein, is barred to the extent that the conduct complained of is protected by the free speech provisions of the United States constitutions, as well as each respective individual States constitutions.

#### **FOURTH AFFIRMATIVE DEFENSE**

### (Good Faith)

Each cause of action is barred, in whole or in part, because Mr. Hubbard acted in good faith at all times.

## **FIFTH AFFIRMATIVE DEFENSE**

### (Lack of Intent)

Plaintiff's claims based on alleged willful misrepresentations are barred because the representations and actions alleged were not intended to mislead or deceive consumers.

## SIXTH AFFIRMATIVE DEFENSE

(Puffing)

Plaintiff's claims for false advertising are barred because the alleged deceptive statements were such that no reasonable person could have reasonably relied upon or misunderstood Mr. Hubbard's statements as claims of fact.

## SEVENTH AFFIRMATIVE DEFENSE

### (Unconstitutionality of Monetary Relief)

DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
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CALIFORNIA COMMON LAW UNFAIR COMPETITION - 11

1 An award of monetary relief, other than restitution, to Claimant under  
2 California's Business and Professions Code Sections 17200 et seq, including but  
3 not limited to penalties of any type, would violate the due process provisions of the  
4 United States and all other respective states' constitutions, including but not  
5 limited to California.

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 (Causation is Lacking)

10 Each cause of action is barred, in whole or in part, because Plaintiff  
11 has not sustained any injury or damage by reason of any material act of omission  
12 on Mr. Hubbard's part.

13 **NINTH AFFIRMATIVE DEFENSE**

14 (Materiality is Lacking)

15 Each cause of action is barred, in whole or in part, because Plaintiff  
16 has not sustained any injury or damage by reason of any material act or omission  
17 on Mr. Hubbard's part.

18 **TENTH AFFIRMATIVE DEFENSE**

19 (Lack of Reliance)

20 Plaintiff's claims are barred, in whole or in part, because of the lack of  
21 reliance by consumers on the alleged misrepresentations by Mr. Hubbard identified  
22 in the Complaint.

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 (Lack of Awareness)

25 DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
26 FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE LANHAM ACT 43(A); UNFAIR  
27 COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;  
28 CALIFORNIA COMMON LAW UNFAIR COMPETITION - 12

1 Plaintiff's claims are barred, in whole or in part, because consumers  
2 lacked awareness of the alleged misrepresentations by Mr. Hubbard described in  
3 the Complaint.  
4

5 **TWELFTH AFFIRMATIVE DEFENSE**  
6

7 (Conduct Not Unlawful)  
8

9 The business practices relating to the allegations in the Claim are not  
10 unlawful.  
11

12 **THIRTEENTH AFFIRMATIVE DEFENSE**  
13

14 (Conduct Not Fraudulent Nor Likely To Deceive)  
15

16 Mr. Hubbard's conduct is not fraudulent and was not likely to mislead  
17 or deceive consumers and/or the public.  
18

19 **FOURTEENTH AFFIRMATIVE DEFENSE**  
20

21 (Lack of Materiality)  
22

23 Plaintiff's claims based on alleged misrepresentations are barred  
24 because the representations alleged by Plaintiff were not material in that, in light of  
25 information commonly known to consumers, they were not likely to affect their  
26 purchasing decisions. Mr. Hubbard's representations and actions alleged in the  
27 Complaint were not likely to mislead consumers acting reasonably under the  
28 circumstances.  
29

30 **FIFTEENTH AFFIRMATIVE DEFENSE**  
31

32 (Lack of Standing)  
33

34 DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
35 FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE LANHAM ACT 43(A); UNFAIR  
36 COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;  
37 CALIFORNIA COMMON LAW UNFAIR COMPETITION - 13

1 Plaintiff lacks either standing and/or capacity to bring some or all of  
2 the claims alleged in the Complaint.  
3

4 **SIXTEENTH AFFIRMATIVE DEFENSE**  
5

6 (Negligence and/or Misconduct of Others)  
7

8 If there was any negligence and/or other misconduct proximately  
9 causing the damages allegedly sustained by Plaintiff, such negligence and/or other  
10 misconduct was that of parties other than Mr. Hubbard, and recovery should be  
11 barred or eliminated to that extent.  
12

13 **SEVENTEENTH AFFIRMATIVE DEFENSE**  
14

15 (Adequate Remedy at Law)  
16

17 Plaintiff's claims for equitable relief are barred to the extent there is  
18 an adequate remedy at law.  
19

20 **EIGHTEENTH AFFIRMATIVE DEFENSE**  
21

22 (No Right to Injunctive Relief)  
23

24 To the extent the Complaint seeks injunctive relief, Plaintiff is not  
25 entitled to such relief because the hardship that would be imposed on Mr. Hubbard  
26 by any such relief would be greatly disproportionate to any hardship that Plaintiff  
27 might suffer in its absence. Further, any injunctive relief that would require  
28 regulation by the Court on an ongoing basis is inappropriate, and Mr. Hubbard's  
29 advertising, marketing, and trademark activities are already monitored by various  
30 federal and state agencies  
31

## **NINETEENTH AFFIRMATIVE DEFENSE**

(No Right to Punitive or Exemplary Damages)

Plaintiff is not entitled to punitive or exemplary damages on any cause of action alleged in the Complaint. Any award of punitive or exemplary damages would violate the due process and/or equal protection clauses of the California and United States constitutions, as well as all other respective states.

## **TWENTIETH AFFIRMATIVE DEFENSE**

**(No Right to Restitution)**

While denying that Plaintiff has stated a valid claim or claims under California Business and Professions Codes Sections 17200 et seq., if such claims are found to exist, an order for restitution is barred to the extent that Plaintiff did not pay monies directly to Mr. Hubbard. See, e.g., Korea Supply Co. V. Lockheed Martin Corp., 29 Cal. 4<sup>th</sup> 1134 (2003).

## **TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(No Attorneys' Fees)**

Plaintiff's request for attorneys' fees in this matter is barred because it lacks any basis in law or contract.

## TWENTY-SECOND AFFIRMATIVE DEFENSE

### (Unjust Enrichment)

Plaintiff's claims are barred to the extent Plaintiff would be unjustly enriched if allowed to recover any monies claimed to be due in the Complaint.

## **TWENTY-THIRD AFFIRMATIVE DEFENSE**

### (Damages Caused By Other Causes)

To the extent that Plaintiff suffered any damages, such damages were proximately caused by persons, entities, and/or factors or events other than Mr. Hubbard and for which Mr. Hubbard was and is not responsible.

#### **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

### (Failure to Mitigate)

Without admitting any wrongful conduct on the part of Mr. Hubbard, and without admitting that Plaintiff has suffered any loss, damage or injury, recovery for any such loss, damage, or injury is barred, in whole or in part, because Plaintiff failed to mitigate such loss, damage, or injury.

## **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

### (Lack of Damage)

Plaintiff has not suffered any damage as a result of any actions allegedly taken by Mr. Hubbard, and are thus barred from asserting any claims against Mr. Hubbard.

## TWENTY-SIXTH AFFIRMATIVE DEFENSE

### (Justifications/Excuse)

Mr. Hubbard's alleged actions, at all relevant times and places, were necessary to the competitive operation of its business, and Plaintiff's alleged injury, if any, is outweighed by the benefit to the public of Mr. Hubbard's actions.

## **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

### (Statute of Limitations)

Plaintiff's claims are barred by the applicable statutes of limitations, if applicable to the various claims pled.

## **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

(Set-off)

Mr. Hubbard alleges that, even if Plaintiff's claims are meritorious, which Mr. Hubbard denies, those claims are subject to setoff and recoupment.

## **TWENTY-NINTH AFFIRMATIVE DEFENSE**

### (Federal Preemption)

Plaintiff's claims are expressly and impliedly preempted by federal law, including but not limited to, the laws enforced by the FTC, USPTO, and The Food, Drug and Cosmetic Act.

## THIRTIETH AFFIRMATIVE DEFENSE

**(Safe Harbor)**

Plaintiff's state law claims are barred by California's safe harbor doctrine because Mr. Hubbard's alleged actions, at all relevant times and places, were in compliance with applicable law.

## THIRTY-FIRST AFFIRMATIVE DEFENSE

#### (Primary/Exclusive Jurisdiction)

Plaintiff's claims are barred by the doctrines of primary and/or exclusive regulatory agency jurisdiction.

DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
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## THIRTY-SECOND AFFIRMATIVE DEFENSE

### (Compliance with Laws)

Plaintiff's claims are barred because the conduct alleged in the Complaint complies with applicable laws, including but not limited to Food and Drug Administration regulations, The Federal Trade Commission, Trademark and copyright laws of the United States, and The Food, Drug, and Cosmetic Act.

### THIRTY-THIRD AFFIRMATIVE DEFENSE

### (Uncertain/Unmanageable Damages)

Plaintiff's requested monetary relief is too speculative and/or remote and/or impossible to prove and/or allocate.

## THIRTY-FOURTH AFFIRMATIVE DEFENSE

### (Unclean Hands)

Plaintiff's claims against Mr. Hubbard are barred, in whole or in part, due to unclean hands. Plaintiff has engaged in naming, labeling, marketing and advertising conduct designed to deceive consumers about its products. Thus, Plaintiff is seeking to capitalize in this case on the fruits of its own misconduct in the form of misleading labeling and advertising.

## THIRTY-FIFTH AFFIRMATIVE DEFENSE

### (Reservations)

Further responding, Mr. Hubbard states that it currently has insufficient knowledge or information on which to form a belief as to whether it

DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
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1 may have additional, as yet unstated, affirmative defenses available. Mr. Hubbard  
2 reserves the right to assert additional affirmative defenses in the even that  
3 discovery indicates it would be appropriate.

5 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**  
6

7 (Fraud)

8 Plaintiff's claims in regards to Trademark Infringement are barred, if  
9 the trademarks claimed were obtained by Plaintiff knowingly making a false  
10 representation to the U.S. Patent and Trademark Office (USPTO) regarding a  
11 material fact, or else willfully withheld material information, and the USPTO  
12 would not have issued the registration but for its reliance on the false  
13 representation.  
14

15 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**  
16

17 (Misuse of Trademark)

18 Plaintiff's claims are barred, if Plaintiffs have used the mark(s) in  
19 violation of any State of Federal Laws.  
20

21 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**  
22

23 (Acquiescence)

24 Plaintiff's claims are barred, if Plaintiffs have previously failed to take  
25 action against infringing parties, or otherwise indicating, implicitly or explicitly,  
26 that nothing will be done about the infringing action.  
27

28 **THIRTY-NINTH AFFIRMATIVE DEFENSE**  
29

30 (Fair Use)

31  
32 DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
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COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;  
CALIFORNIA COMMON LAW UNFAIR COMPETITION - 19

1 Plaintiff's claims are barred, in whole or in part, due to fair use. Any  
2 use of the alleged owned mark(s), was used in a way that is descriptive of Mr.  
3 Hubbard's product and the taste therein. The use of the descriptive name of  
4 "pom", in describing the flavor "pomegranate", was not used as a copyright or  
5 trademark, and was used in good faith, barring any and all claims.  
6  
7

8 **FOURTIETH AFFIRMATIVE DEFENSE**

9 (Genericness)  
10

11 Plaintiff's claims are barred, in whole or in part, because the  
12 Plaintiff's marks are generic. The Plaintiff's mark, which has allegedly been  
13 infringed, is a mark that describes the entire category or genus of their product(s)  
14 that the mark is supposed to distinguish, and thus cannot receive protection under  
15 the law. Generic marks are either generic from the outset, or become generic after  
16 they become part of the common descriptive name of a category or genus of  
17 products.  
18  
19

20 **FORTY-FIRST AFFIRMATIVE DEFENSE**

21 (Abandonment of a Mark)  
22

23 Plaintiff's claims are barred, in whole or in part, if the Plaintiffs have  
24 abandoned the mark. Abandonment occurs when the trademark owner stops using  
25 the mark with no intention to resume using it. Use of a mark in this context means  
26 the bona fide use of the mark made in the ordinary course of trade, and not made  
27 merely to reserve a right in a mark. Nonuse is *prima facie* evidence of  
28 abandonment. Furthermore, any failure to police and enforce a mark can lead to  
29  
30  
31

32 DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
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CALIFORNIA COMMON LAW UNFAIR COMPETITION - 20

1 abandonment if the trademark owner is deemed to have impliedly consented to  
2 confusingly similar uses of the mark. If abandonment occurs, all rights in the mark  
3 cease.  
4

5 **FORTY-SECOND AFFIRMATIVE DEFENSE**  
6

7 (Genericide)  
8

9 Plaintiff's claims are barred in whole or in part, because of their mark  
10 becoming genericide.  
11

12 **FORTY-THIRD AFFIRMATIVE DEFENSE**  
13

14 (No Likelihood of Confusion)  
15

16 Plaintiff's claims are barred, in whole or in part, because there is no  
17 likelihood of confusion between the Plaintiff's marks, and Mr. Hubbard's product  
18 Pur Pom.  
19

20 **FORTY-FOURTH AFFIRMATIVE DEFENSE**  
21

22 (Monopoly)  
23

24 Plaintiff's claims are barred, in whole or in part, because allowing  
25 them to stake claim to the letters "pom", would in essence allow them to claim a  
26 monopoly on the letters "pom", no matter how used. Plaintiffs have an extensive  
27 track record of filing similar lawsuits against companies using the three letters in  
28 sequence, for instance, Plaintiffs are currently litigating against a company with a  
29 product called "pompis". Clearly this is just another example of Plaintiffs attempts  
30 to gain a monopoly on the word "pom".  
31  
32

## Prayer for Relief

WHEREFORE, Mr. Hubbard prays for judgment as follows:

1. That Plaintiff take nothing by way of his Complaint and that it be dismissed with prejudice;
2. That the Complaint be dismissed with prejudice and judgment entered in favor of Mr. Hubbard;
3. That Mr. Hubbard be awarded his costs, disbursements and attorneys' fees in this action; and
4. For such other and further relief as this Court deems just and proper.

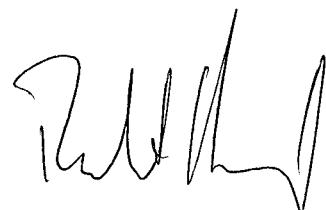
DATED: November 25<sup>th</sup>, 2013

By: Robert G. Hubbard  
Robert G. Hubbard,  
Defendant, Pro Se

DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE LANHAM ACT 43(A); UNFAIR  
COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;  
CALIFORNIA COMMON LAW UNFAIR COMPETITION - 22

1  
2 **DEMAND FOR JURY TRIAL**  
3

4 Pursuant to Fed. R. Civ. P. 38(b), Mr. Hubbard demands a trial by jury of all  
5 triable issues and affirmative defenses herein.  
6  
7  
8  
9  
10  
11

12 DATED: November 25<sup>th</sup>, 2013  
13  
14  
15 By:   
16 Robert G. Hubbard  
17 Defendant, Pro Se  
18  
19  
20  
21

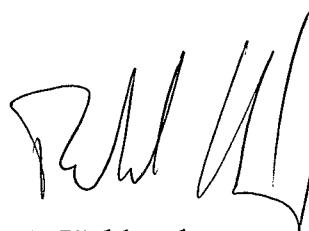
22 **Certificate of Service**  
23  
24  
25  
26

I hereby certify that, on this 25<sup>TH</sup> day of November, 2013, a true and correct copy of the  
DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED  
COMPLAINT FOR : FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE  
LANHAM ACT 43(A); UNFAIR COMPETITION UNDER CALIFORNIA BUSINESS AND  
PROFESSIONS CODE 17200 ET SEQ.; CALIFORNIA COMMON LAW UNFAIR  
COMPETITION and Demand for Jury Trial was conventionally served on the following by first  
class U.S. mail at the address below:

27  
28 Roll Law Group pc  
29 11444 West Olympic Blvd.  
30 Los Angeles, CA 90064-1557  
31 Tel. 310-966-8400  
Fax. 310-966-8810  
32 Attorneys for Pom Wonderful, LLC

DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE LANHAM ACT 43(A); UNFAIR  
COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;  
CALIFORNIA COMMON LAW UNFAIR COMPETITION - 23

1 DATED: November 25<sup>th</sup>, 2013  
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Robert G. Hubbard  
Defendant, Pro Se

32 DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :  
FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE LANHAM ACT 43(A); UNFAIR  
COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;  
CALIFORNIA COMMON LAW UNFAIR COMPETITION - 24